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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	)	CC Docket No. 95-20
	)	
1998 Biennial Regulatory Review -- Review of *Computer III* and ONA Safeguards and Requirements	)	CC Docket No. 98-10

REPLY COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Ava B. Kleinman
Seth S. Gross

Its Attorneys

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

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SUMMARY

AT&T supports the Commission's objective of reducing or eliminating rules and regulatory requirements that have become unnecessary or redundant. At the present time, however, notwithstanding the Bell Operating Companies' ("BOCs'") self-serving comments to the contrary, the local markets remain a monopoly of the BOCs and other incumbent LECs. As a result, it would be premature for the Commission to relieve the BOCs and other incumbent LECs of their regulatory obligations at this time based either on the development of competition in local telecommunications markets or on the constraints imposed on the BOCs by the 1996 Act.

By virtue of their continued monopoly position in their local markets and bottleneck control over essential local facilities required by competing information service providers ("ISPs"), the BOCs continue to have both the ability and the incentive to engage in anticompetitive conduct against competing ISPs. In these circumstances, it is essential that, at a minimum, the Commission keep in place the Computer III nonstructural safeguards for the provision of intraLATA information services that were designed to protect competing ISPs from discriminatory or anticompetitive behavior by the BOCs.

AT&T does not oppose the Commission's proposal to relieve the BOCs of their obligation to file Comparably Efficient Interconnection ("CEI") plans provided that certain other tariffing and network disclosure requirements essential to the

development of competition remain in force. In particular, the Commission should continue to require the BOCs to meet their existing ONA obligations (1) to file tariffs for all basic service elements, (2) to provide adequate disclosure of network changes, and (3) to publish a list of basic service elements used by the BOC to provide its own information services.

No commenter opposes the Commission's tentative conclusion that the notice of network changes rules established pursuant to Section 251(c)(5) should supersede the Commission's previous network information disclosure rules and reporting requirements established in the Computer II, Computer III and ONA proceedings. Moreover, no commenting party provides any persuasive arguments why the "all-carrier" rule should continue to apply to non-dominant interexchange carriers. In view of the Commission's prior findings that the interexchange market is highly competitive and that no carrier in that market has market power, there is no justification for subjecting non-dominant interexchange carriers to the all-carrier rule. Pursuant to the Commission's statutory duty under Section 11 of the Telecommunications Act to eliminate unnecessary regulations, the Commission should eliminate the all-carrier rule for non-dominant interexchange carriers.

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REPLY COMMENTS OF AT&T CORP.

Pursuant to Section 1.415 of the Commission's Rules and its Further Notice of Proposed Rulemaking, released January 30, 1998 ("FNPRM"), AT&T Corp. ("AT&T") submits these reply comments concerning the continued need for certain of the Commission's *Computer III* and *Open Network Architecture* ("ONA") safeguards and requirements, under which the Bell Operating Companies ("BOCs") currently provide information services, in light of changes in telecommunications technology and market conditions and the passage of the Telecommunications Act of 1996 ("1996 Act").[1]

INTRODUCTION

In general, the comments support the Commission's objective of reducing or eliminating rules and regulatory

[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.*

requirements that have become unnecessary or redundant.[2] However, there is disagreement as to whether the prerequisites for reducing regulatory requirements have been met in this case. The majority of commenters agree that it would be premature to significantly reduce or eliminate the regulatory requirements currently imposed on the Bell Operating Companies ("BOCs") because those carriers still possess market power.[3] Not surprisingly, the only commenters that contend there is sufficient competition to justify a significant reduction or elimination of the existing safeguards are the BOCs. However, instead of addressing the issue of competition in the local exchange market, where they clearly have market power, they attempt to redirect the Commission's focus to the level of competition in the information services market.[4] The Commission should not be distracted by this tactic.

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[2] *See* Attachment A for a list of the parties filing comments in this proceeding.

[3] *See* Ad Hoc, p. 5 (competition in the exchange access market "has hardly reached a level sufficient to restrain anticompetitive conduct by the BOCs"); ADT, p.4; AirTouch, p. 4; AOL, p. 9; CIX, pp. 11-12; CompuServe, pp. 6-7; GSA, p. 4 (lack of competition in the short haul intraLATA services); Helicon, pp. 3-4; ITAA, pp. 11-13; LCI, pp. 6-7; MCI, p. 5; and Time Warner, pp. 6-8.

[4] *See, e.g.*, Bell Atlantic, pp. 4-7 (noting the fast growth of internet-based information service providers); SBC, p. 3 (the presence of large information service competitors "has sufficiently diminished any possibility of BOC access discrimination").

The fact that there may be competition in the information service provider ("ISP") marketplace is irrelevant to the issue before the Commission. Focusing on competition in that market ignores the indisputable fact that ISPs remain almost entirely dependent on the BOCs' local exchange monopolies for their underlying services. The primary reason there is competition today in the information services market is that the Commission's existing rules and regulations allow non-affiliated ISPs to have nondiscriminatory access to the same underlying services used by the BOCs' own ISP affiliates, thereby enabling the development of a strong competitive market.[5]

The undisputable fact is that local telecommunications markets remain a monopoly of the BOCs and other incumbent LECs as a result of their continued bottleneck control of essential local

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[5] The BOCs have made this same flawed argument in their applications to enter the interLATA market under section 271. In those applications, the BOCs wanted the Commission to look only at competition in the interLATA market rather than at the BOCs' continuing monopoly position in their local telecommunications markets and the continuing opportunity and incentive which that monopoly creates for them to leverage their local monopoly position to gain an unfair competitive advantage in the interLATA market. The Commission specifically rejected the BOCs' argument, finding that its duty is to ensure that the BOC's local telecommunications market is open to competition. *See, e.g., Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, ¶386 (rel. Aug. 19, 1997).

facilities.[6] Moreover, many of the provisions of the 1996 Act which are designed to open local exchanges to competition have not yet been implemented as a result of legal challenges or the recalcitrance of the BOCs and GTE. Furthermore, as several ISPs note, incumbent LECs have in fact exercised their monopoly power in the local exchange market to the detriment of the ISPs.[7] Consequently, until the BOCs and other incumbent LECs have fully implemented the provisions of the 1996 Act most critical to the development of local competition, including the Commission's rules relating to the scope of the BOCs' obligation to combine unbundled network elements, and competition has developed to the point at which it provides a meaningful constraint on the BOCs' market power, it would be premature for the Commission to relieve the BOCs and other incumbent LECs of their existing regulatory obligations.[8]

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[6] *See, e.g.*, Comments of AT&T (at 13-21) on the *Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services*, Comments of AT&T, CC Docket No. 98-11, filed April 6, 1998, ("Bell Atlantic Petition").

[7] *See, e.g.*, CIX, p. 5 (US WEST removed a service that offered an unbundled copper loop from the independent ISP to the US WEST customer which could be used for xDSL communications when US WEST rolled out its own xDSL offering); Air Touch, p. 2 (pager notification service is offered only to Ameritech voice messaging customers that receive paging services from Ameritech).

[8] The Commission should also await the outcome of the pending legal challenges to the 1996 Act brought by the BOCs and GTE before taking any steps in reliance on the 1996 Act that might permit the BOCs to delay or stifle emerging competition in the

(footnote continued on following page)

I. THE TERM "TELECOMMUNICATIONS SERVICE" USED IN THE 1996 IS SUBSTANTIALLY THE SAME AS THE "BASIC TRANSMISSION SERVICE" USED IN THE COMMISSION'S COMPUTER II PROCEEDING

The majority of those parties commenting concur with AT&T that the definitions of "telecommunications services," as defined in the 1996 Act,[9] and "basic transmission services," as defined in the Commission's *Computer II* proceeding,[10] have substantially the same meaning, because, as AOL notes (p. 7), both definitions refer to the "basic underlying transmission function."[11]

Although Bell Atlantic (p. 19) and US WEST (p. 15 n.48) agree that the meaning of the statutory term "telecommunications services" is substantially similar to the Commission's definition of "basic services," they contend that protocol conversion should no longer be treated as an information service. Such a radical change is contrary to the clear language of the 1996 Act.

(footnote continued from previous page)

local telecommunications markets. *See Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *modified on rehearing*, 124 F.3d 934 (8th Cir. 1997), *cert. granted*, 66 U.S.L.W. 3484 (U.S. Jan. 26, 1998).

[9] 47 U.S.C. § 153(43).

[10] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384, 420 (1980) ("Computer II").

[11] *See also* Ameritech, p. 15; CompuServe, p. 14; ITAA, pp. 3-5; and MCI, p. 11.

Protocol conversion falls squarely within the definition of information service, because it involves the "transforming . . . [of] information via telecommunications."[12] The definition of telecommunications, on the other hand, excludes protocol conversion because it is limited to the "transmission . . . of information . . . without change in the form."[13] It is clear that a net "conversion" of a protocol is a "transformation" of the information within the meaning of the Act.

II. THE COMMISSION SHOULD CONTINUE TO APPLY ITS NONSTRUCTURAL SAFEGUARDS TO THE BOCS' PROVISION OF INTRALATA INFORMATION SERVICES.

Many of the non-BOC commenting parties argue that structural separation should be required for both BOC intraLATA and interLATA services.[14] On the other hand, the BOCs argue that structural separation is unnecessary and that the "*net* public benefits of nonstructural safeguards significantly outweigh those of structural separation requirements."[15] AT&T continues to believe that the Commission's tentative conclusion, that the BOCs may continue to provide intraLATA information services on an

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[12] 47 U.S.C. § 153(20).

[13] 47 U.S.C. § 153(43).

[14] *See* AOL, p. 10; ALTS, pp. 14-20; CIX, p. 14; CompuServe, pp. 7-10; GSA, p. 3; ITAA, p.9; LCI, p. 2; and MCI, p. 22.

[15] BellSouth, p. 16 (emphasis in original). *See also* Ameritech, p. 1; Bell Atlantic, p. 4; GTE, p. 7; SBC, p. 3; and US WEST pp. 10-13.

integrated basis subject to the Commission's *Computer III* nonstructural safeguards,[16] is an appropriate way to deal with the BOCs' dominant market position. The BOCs remain dominant providers of local exchange and exchange access services in their in-region states with approximately 99.1 percent of the local service revenues in those markets. Consequently, it is essential that, at a minimum, the Commission keep in place the *Computer III* nonstructural safeguards that were designed to protect competing ISPs from discriminatory or anticompetitive behavior by the BOCs.[17]

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[16] *See* FNPRM, ¶¶ 7, 51.

[17] Because incumbent LECs are required to provide nondiscriminatory access to network elements used in the provision of telecommunications services, the Commission should extend this requirement to the unbundling of packet switches. In the *Local Competition Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15713 (1996)("Local Competition Order"), the Commission "declined to find . . . that incumbent LECs' packet switches should be identified as network elements," because the record was "insufficient." However, the circumstances have changed since 1996. Specifically, the incumbent LECs are beginning to tariff high-speed data services at retail, and those basic telecommunications services are becoming an increasingly important component of both incumbent and competitive LECs' offers. Therefore, the incumbent LECs should now be required to unbundle those packet switches used to provide high-speed data services. *See* ITAA, pp. 26, n.53 and 28 ("[t]he term 'packet' is used broadly to refer to cell, frame, and packet-based data transport technology").

III. THE COMMISSION SHOULD RELIEVE THE BOCS OF THEIR OBLIGATION TO FILE CEI PLANS ONLY IF ADEQUATE TARIFFING AND NETWORK DISCLOSURE REQUIREMENTS REMAIN IN FORCE

The BOCs argue that the CEI requirements should be removed in their entirety because the CEI approval process only delays their ability to introduce new information services and deprives consumers of the benefit of additional competition.[18] On the other hand, several non-BOC commenters contend that total elimination of the CEI requirements would be premature, as "the CEI plan requirement continues to be in the public interest because the requirement is needed to protect against BOC conduct."[19] MCI provides yet a third view (pp. 47-48), claiming

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[18] *See* Bell Atlantic, pp. 11-12; Ameritech, pp.7-10; BellSouth, pp. 22-26; SBC, p. 27; and US WEST, pp. 25-26. Moreover, Ameritech claims (pp. 12-14) that the BOCs will offer advanced new information and data transport capabilities only if the CEI and other regulatory requirements are lifted. Consistent with this claim, Ameritech recently requested relief under Section 706 of the Act of both the interLATA prohibition and some of the Section 272 separation requirements. *See Ameritech Petition to Remove Barriers to Investment in Advanced Telecommunications Services*, CC Docket No. 98-32. However, as Time Warner (pp. 6-7) shows, relieving the BOCs of their obligation to unbundle or offer on a wholesale basis high-speed data services needed by ISPs would "make it very unlikely that CLECs could offer ISPs a significant alternative to data transmission services offered by the BOCs." *See also* AT&T's comments (at 7-8) to Ameritech's petition, and (at 10-11) to the Bell Atlantic Petition. Moreover, Ameritech has already announced the availability of high-speed data services in Michigan, belying its claim that it needs regulatory relief to provide such services. *Ameritech Brings Future of Internet to Royal Oak*, PR News Wire, April 16, 1998.

[19] *See, e.g.*, Air Touch, p. 4.

that the CEI requirements have failed to provide protection against BOC abuses and therefore should be eliminated.

In order to achieve a reasonable balance between the Commission's obligation to reduce or eliminate regulatory requirements that are no longer needed, and its recognition that, until full and effective competition in local telecommunications markets is a reality, certain regulatory safeguards will still be necessary,[20] the Commission should adopt its tentative conclusion, with slight modifications. In light of the present uncertainty regarding the scope of the BOCs' obligations under ONA and Section 251, the Commission should not relieve the BOCs of their obligation to file CEI plans unless the three requirements set forth in AT&T's comments (pp. 14-15) continue to be met.

First, the Commission should continue to require the BOCs to file tariffs for all ONA Basic Service Elements ("BSEs") on an unbundled basis. Second, the Commission must continue to require adequate disclosure of network changes by the BOCs.[21] Third, the Commission should continue to require the BOCs to

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[20] *See* FNPRM, ¶ 7; 47 U.S.C. § 161(a)(2).

[21] Those two requirements are reinforced by US WEST, which agrees that the CEI requirements should be eliminated only because the existing tariffing and network disclosure requirements provide ISPs with adequate protection. US WEST, pp. 27-46.

publish annually a list of the BSEs which they use to provide their own information services.[22]

IV. NON-DOMINANT INTEREXCHANGE CARRIERS SHOULD BE RELIEVED FROM THE APPLICATION OF THE "ALL-CARRIER" RULE.

In its comments, AT&T demonstrated (pp. 19-22) that different regulatory rules should be applied to "dominant carriers," which have the market power to control prices, and "non-dominant carriers," which do not have market power.[23] Because the interexchange telecommunications market is now highly competitive and all carriers in that market are classified as "non-dominant," there is no longer any justification for subjecting AT&T or any other non-dominant interexchange carrier to the all-carrier rule.[24]

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[22] Only US WEST (p. 53) and Bell Atlantic (p. 22) specifically oppose retaining this report. US WEST contends that the ONA Users Guide provides sufficient detail on BSEs used by the BOCs to provide their own enhanced services. This contention is wrong. The ONA Users Guide merely lists the network elements offered by a BOC, it does not list those BSEs used by a BOC to provide its own information services. It is this information that is an important tool for providers of enhanced services, because it enables them to know what basic services underlie a BOC's information services offerings.

[23] *See, e.g.*, 47 C.F.R. §§ 61.3(o), 61.3(u); *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3274, ¶ 4 (1995) ("*AT&T Nondominance Order*") ("In a series of orders, the Commission distinguished two kinds of carriers -- those with market power (dominant carriers) and those without market power (non-dominant carriers)").

[24] AT&T also agrees with MCI (pp. 12-13) that given the intense competition in the long distance services market, there is no longer any need to prohibit the bundling of basic and enhanced services when offered by non-dominant carriers. The

(footnote continued on following page)

A few commenters contend that the disclosure obligations of the all-carrier rule should continue to apply to all carriers owning basic transmission facilities.[25] However, none of these commenters provides a rationale for the continuation of that rule as applied to non-dominant interexchange carriers. The Commission should use this opportunity to limit this rule where it is not needed -- a rule that also lacks adequate specificity to function efficiently, is difficult to enforce, and is unclear in its application.[26] Accordingly, consistent with the Commission's statutory obligation to eliminate regulations that are "no longer necessary in the pubic interest as the result of meaningful economic competition," the Commission should revise its *Computer II* all-carrier rule to exclude non-dominant interexchange carriers.

(footnote continued from previous page)

Commission should promptly initiate a rulemaking proceeding to remove this outdated restriction.

[25] *See* AOL, p. 20; Bell Atlantic, p. 23; and ITAA, p. 18.

[26] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, 19496, (1996) ("*Local Competition Second Report and Order*")("we believe that the all carrier rule standard lacks adequate specificity to function efficiently . . . . Requiring carriers to litigate the meaning of 'reasonable' notice through our complaint process on a case-by-case basis might slow the introduction and implementation of new technology and services, and burden both carriers and the Commission with potentially lengthy, fact-specific enforcement proceeding").

Finally, no party opposed the Commission's tentative conclusion that AT&T should no longer be required to file an affidavit that it has not discriminated in the quality of network services provided to enhanced service providers pursuant to the Commission's ONA rules.[27] Consequently, "because the level of competition in the interexchange market is an effective check on AT&T's ability to discriminate in the quality of network services provided to competing ISPs,"[28] the Commission should eliminate that filing requirement.

CONCLUSION

For the reasons stated above, the Commission should proceed cautiously and only reduce or eliminate rules and regulatory requirements applicable to the BOCs and other incumbent LECs that have clearly become unnecessary, and for which other appropriate safeguards are clearly sufficient and not subject to legal challenge. Moreover, because the existing all-

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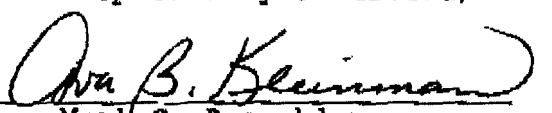
[27] *See* FNPRM, ¶ 116.

[28] *Id.*

carrier rule is not necessary to ensure competitive choice and nondiscriminatory access in the interexchange market, it should not be applied to non-dominant interexchange carriers.

Respectfully submitted,

By 

Mark C. Rosenblum
Ava B. Kleinman
Seth S. Gross

Its Attorneys

Room 3252J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8312

April 23, 1998

COMPUTER III FURTHER REMAND - CC Docket No. 95-20

COMMENTING PARTIES

Ad Hoc Telecommunications Users Committee ("Ad Hoc")

ADT Security Services, Inc. ("ADT")

AirTouch Paging ("AirTouch")

Alliance for Telecommunications for Industry Solutions ("ATIS")

America Online, Inc. ("AOL")

Ameritech

APK Net, Ltd., et al ("APK")

Association for Local Telecommunications Services ("ALTS")

Association of TeleServices International, Inc. ("ATSI")

AT&T Corp.

Bell Atlantic

BellSouth Corporation ("BellSouth")

California, People of the State of and the Public Utilities Commission ("California")

Commercial Internet Exchange Association ("CIX")

Community Internet Systems, Inc. ("CIS")

CompuServe Network Services ("CompuServe")

General Services Administration ("GSA")

GTE

Helicon Online, L.P. ("Helicon")

Information Technology Association of America ("ITAA")

KWOM Communications, Inc.

LCI International Telecom Corp. ("LCI")

MCI Telecommunications Corporation ("MCI")

Metro One Telecommunications, Inc.

NorthPoint Communications, Inc.

SBC Communications Inc. ("SBC")

Telecommunications Resellers Association ("TRA")

Time Warner Communications Holdings Inc. ("Time Warner")

U S West, Inc. ("U S WEST")

United States Telephone Association ("USTA")

Western Regional Networks, Inc.; RapidNet, Inc.; Coalition of Utah Independent Internet Service Providers ("Western")

WorldCom, Inc. ("WorldCom")

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 23rd day of April, 1998, a copy of the foregoing "Reply Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

Rena Martens

Rena Martens

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Service List - CC Docket No. 95-20

James S. Blaszak
Kevin DiLallo
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, N.W.
Suite 900
Washington, D.C. 20036
Attorneys for Ad Hoc
Telecommunications Users
Committee

Arthur Evans
Ad Hoc Committee of Independent
Information Providers
266 Jericho Turnpike, Suite F
Floral Park, NY 11001

Jeffrey H. Olson
Carl W. Hampe
Kira A. Merski
Paul, Weiss, Rifkind, Wharton
& Garrison
1615 L Street, N.W., Suite 1300
Washington, D.C. 20036
Attorneys for ADT Security Services, Inc.

Mark A. Stachiw
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, TX 75251

Carl W. Northrop
Michelle W. Cohen
Paul, Hastings, Janofsky & Walker LLP
1299 Pennsylvania Ave., N.W.
Tenth Floor
Washington, D.C. 20004
Attorneys for AirTouch Paging

Susan M. Miller
Alliance for Telecommunications
Industry Solutions, Inc.
1200 G Street, N.W., Suite 500
Washington, D.C. 20005

George Vradenburg, III
William W. Burrington
Jill A. Lesser
Steven N. Teplitz
America Online, Inc.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Donna N. Lampert
James J. Valentino
Joseph S. Paykel
Mintz, Levin, Cohn, Ferris, Glovsky and
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004-2608
Attorneys for America Online, Inc.

John T. Lenahan
Frank Michael Panek
Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Christopher W. Savage
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
Attorneys for APK Net, Ltd.; Clarity
Connect, Inc.; Cybercom; Cyber
Warrior, Inc.; Double D Network
Services, Inc.; Erinet; Greatland
Internet Services, Inc.; Helicon On-
Line, L.P.; Infinet; Infohouse;
Inforamp; Internet Connect
Company; MTP LLC DBA Javanet;
Proaxis Communications, Inc.;
Rockbridge Global Village;
Shrevenet, Inc.; Within Technology,
Inc.; Zoomnet

Richard J. Metzger
Emily M. Williams
Association for Local
Telecommunications Services
888 17th Street, N.W., Suite 900
Washington, D.C. 20006

Herta Tucker
Association of TeleServices
International, Inc.
1200 19th Street, N.W.
Washington, D.C. 20036

Frank Moore
Smith, Bucklin & Associates, Inc.
Government Affairs Division
1200 19th Street, N.W.
Washington, D.C. 20036
Counsel for Association of TeleServices
International, Inc.

Lawrence W. Katz
Edward D. Young, III
Michael E. Glover
Bell Atlantic Telephone Companies
1320 North Court House Road
8th Floor
Arlington, VA 22201

M. Robert Sutherland
A. Kirven Gilbert, III
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Peter Arth, Jr.
William N. Foley
Ellen S. Levine
505 Van Ness Avenue
San Francisco, CA 94102
Attorneys for the People
of the State of California and the
Public Utilities Commission

Ronald E. Plesser
Mark J. O'Connor
Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
Attorneys for Commercial Internet
Exchange Association

Barbara A. Dooley
Robert D. Collet
Commercial Internet Exchange Assn.
1041 Sterling Road, Suite 104A
Herndon, VA 20170

Paul Schumacher
Community Internet Systems, Inc.
P.O. Box 81
Columbus, NE 68602-0081

Randolph J. May
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
Attorneys for CompuServe
Network Services

Emily C. Hewitt
George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, N.W., Room 4002
Washington, D.C. 20405

Snavely King Majoros
O'Connor & Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005
Economic Consultants to GSA

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

John H. Raposa
Richard McKenna
GTE Telephone Operations
600 Hidden Ridge
Irving, TX 75038

R. Michael Senkowski
Robert J. Butler
Kenneth J. Krisko
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for GTE

Scott J. Rubin
3 Lost Creek Drive
Selinsgrove, PA 17870
Counsel for Helicon Online, L.P.

Jonathan Jacob Nadler
Brian J. McHugh
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
PO Box 407
Washington, D.C. 20044
Counsel for the Information Technology Association of America

Patrick H. Gaughan
PO Box 3192
Oak Brook, IL 60522
Attorney for KWOM Communications, Inc.

KWOM Communications, Inc.
799 Roosevelt Road
Building 6, Suite 306
Glen Ellyn, IL 60137

Douglas W. Kinkoph
LCI International Telecom Corp.
8180 Greensboro Drive, Suite 800
McLean, VA 22102

Linda L. Oliver
David L. Sieradzki
Hogan & Hartson, L.L.P.
555 Thirteenth St., N.W.
Washington, D.C. 20004
Attorneys for LCI International Telecom Corp.

Frank W. Krogh
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Karen Johnson
Metro One Telecommunications, Inc.
8405 SW Nimbus Avenue
Beaverton, OR 97008

Russell Blau
William Fishman
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007-5116
Attorneys for NorthPoint Communications, Inc.

Steven Gorosh
NorthPoint Communications, Inc.
222 Sutter Street
San Francisco, CA 94108

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala
SBC Communications Inc.
One Bell Center, Room 3532
St. Louis, MO 63101

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W., Suite 701
Washington, D.C. 20006
Attorneys for Telecommunications
Resellers Association

Brian Conboy
Thomas Jones
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
Attorneys for Time Warner
Communications Holdings Inc.

Robert B. McKenna
Jeffry A. Brueggeman
Dan L. Poole
U S West, Inc.
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036

Mary McDermott
Linda Kent
Keith Townsend
Lawrence E. Sarjeant
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005-2164

L. B. Golter
Western Regional Networks, Inc.
1000 North Ninth Street, Suite 5
Grand Junction, CO 81501

George Peabody
RapidNet, Inc.
508 Sixth Street, #201
Rapid City, SD 57701

Sue Ashdown
Coalition of Utah Independent Internet
Service Providers
51 E 400 South, Suite 200
Salt Lake City, UT 84101

Catherine R. Sloan
Richard L. Fruchterman, III
Richard S. Whitt
David N. Porter
WorldCom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036